

SENATE JOINT RESOLUTION 32
By Beavers

A RESOLUTION to propose an amendment to Article II, Section 28, of the Constitution of Tennessee, relative to the taxation of income.

WHEREAS, Article I, Section 1 of the Declaration of Rights of the Constitution of Tennessee provides: "That all power is inherent in the people," which establishes that the Legislature has no power not delegated to it by the people in the Constitution; and

WHEREAS, the Constitution of Tennessee in Article II, Section 28 lists the only powers to tax given to the legislature and gives it the "power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem" but does not give it the power to levy a tax on or measured by incomes of natural persons; and

WHEREAS, such "power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem" was in Article II, Section 28 of the Tennessee Constitution when it was adopted in 1870 and such provision is contained verbatim in the 1973 amendment to Article II, Section 28; in the case of Evans v. McCabe, 164 Tenn. 672, 52 S.W.2d 159 (1932), in a decision by four justices with one justice concurring, the Tennessee Supreme Court held that such provision "conferred upon the legislature the power to tax only one class of income" and "necessarily denied to the legislature the power to tax incomes of other classes" and, therefore, that a tax on personal income enacted by the legislature was unconstitutional; and, thereafter, in Jack Cole Co. v. MacFarland, 206 Tenn. 694, 337 S.W.2d 453 (1960), and in Gallagher v. Butler, 214 Tenn. 129, 378 S.W.2d 161 (1964), in unanimous opinions, the Tennessee Supreme Court quoted with approval and followed its ruling in Evans v. McCabe; and

WHEREAS, despite three rulings by the Tennessee Supreme Court, there have been recent attempts to have the legislature tax personal incomes other than incomes derived from stocks and bonds not taxed ad valorem; and

WHEREAS, future attempts at enacting a general personal income tax should be averted to prevent the waste of taxpayers' money by costly legislative sessions and needless litigation; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED FOURTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that a majority of all the members of each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed that the Constitution of Tennessee be amended as follows:

Article II, Section 28 is amended by deleting the following sentence:

The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

And by substituting instead the following sentence:

The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem; however, the Legislature shall have no power to levy any other tax on or measured by incomes of natural persons.

BE IT FURTHER RESOLVED, that the foregoing be referred to the One Hundred Fifth General Assembly and that this resolution proposing such amendment be published by the Secretary of State in accordance with Article XI, Section 3 of the Constitution of Tennessee.

BE IT FURTHER RESOLVED, that the clerk of the house of representatives is directed to deliver a copy of this resolution to the Secretary of State.